

Kenneth Hollander - 8/21/2007

1 BY MR. MAKOUS:

2 Q Okay. So it's -- just to get off this
3 particular topic, you don't care how many people have no
4 opinion in this survey, you just accept it as the way it
5 is?

6 MR. DAUCHER: Argumentative. Multiple
7 questions.

8 MR. MAKOUS: All right. I will withdraw.

9 BY MR. MAKOUS:

10 Q Do you care how many people have no opinion in
11 any survey design you've had ever?

12 A If I have cast my question carefully and if I
13 have given them permission to have no opinion, then I
14 accept as a matter of course that these people have no
15 opinion.

16 Q Doesn't the answer "I don't know" qualify as no
17 opinion?

18 A Yes.

19 Q All right. What's an entity as you used it in
20 this survey?

21 A What is an entity as I used it on this survey?

22 Q Yeah. Define it for me.

23 A Any of the names, organizations, real or
24 imagined, that appear on that web page.

25 Q People. Is a person an entity?

Page 118

Ben Hyatt Certified Deposition Reporters
888.272.0022 818.343.7040 Fax 818.343.7119 www.benhyatt.com

Kenneth Hollander - 8/21/2007

1 A That's correct.

2 Q How many different entities appeared on your
3 stimuli that respondents responded to on this first
4 question?

5 A Well, I'd have to look at those pages again. I
6 know that we had -- if we just talk about the test group,
7 we had DMV.ORG, we had Google, Progressive, we had
8 Federal Express. That's what comes to mind at the
9 moment.

10 Q A lot of those were advertisers on that website?

11 A Absolutely.

12 Q So you were testing just essentially anything on
13 the website anywhere. You weren't testing the website's
14 ownership. You were trying to test what people thought
15 about anything they saw on any DMV.ORG web page under
16 them, correct?

17 A Anything they saw. What I showed them is what
18 they would have seen were they online seeking information
19 and they saw those four web pages. Yes, anything that
20 was on those pages, it's fair game to ask about them.

21 Q You were sensitizing them, weren't you, by
22 showing them four at once?

23 A I did not show them four at once.

24 Q You showed four in a row, told them to go back
25 and look at them. You were sensitizing?

Page 120

Ben Hyatt Certified Deposition Reporters
888.272.0022 818.343.7040 Fax 818.343.7119 www.benhyatt.com

Kenneth Hollander - 8/21/2007

1 Q And what question did they see?

2 A What word is being presented.

3 Q Okay. That's the question at the very top on
4 the right there?

5 A Yes.

6 Q Did you have any that terminated, failing to see
7 Cedar?

8 A I don't know the answer to that question. They
9 certainly were not part of the final 834.

10 Q Now, the next paragraph after the list of things
11 says, we're going to show you four web pages and ask you
12 some questions about them, close quote.

13 Is that your work? Did you write that?

14 A Yes, I did.

15 Q So you're sensitizing the respondents as to what
16 they expect to see; is that correct?

17 A I'm going to object to the use of the word
18 "sensitized." Sir, I'm telling the respondents that they
19 were going to be seeing more than one page.

20 Q Why not just present them the pages?

21 A Because I want them to be able to view them and
22 not expect there to be a question after the initial
23 viewing. I made a judgment call. Here's what I'm going
24 to show you. And then I'm going to show them.

25 Q Is that the way, in fact, that people who

Page 125

Ben Hyatt Certified Deposition Reporters
888.272.0022 818.343.7040 Fax 818.343.7119 www.benhyatt.com

Kenneth Hollander - 8/21/2007

1 actually travel to the DMV.ORG website are instructed
2 when they enter the site?

3 A No.

4 Q Aren't you obligated as a survey expert to
5 attempt to emulate the real world environment as closely
6 as possible when conducting a survey when doing a
7 consumer perception?

8 A Yes. But --

9 Q Yes. Say yes, sir, please?

10 A Yes, sir.

11 Q So it is what you attempt to do?

12 A Yes.

13 Q This particular instruction is not consistent
14 with the real world that anyone enters the DMV.ORG
15 website in, is it?

16 A We spoke earlier today about the fact that there
17 are many ways into the website, that I believe I was told
18 that on average four or five pages of this website are
19 viewed. I chose to present four pages in this survey. I
20 chose to alert the respondent that there would be more
21 than one page that they intended to look at before
22 questioning began, and I did that.

23 Q Okay.

24 A I replicated the marketplace with respect, as
25 best I could, to the pages they would view and the order

Page 126

Ben Hyatt Certified Deposition Reporters
888.272.0022 818.343.7040 Fax 818.343.7119 www.benhyatt.com

Kenneth Hollander - 8/21/2007

1 A Yes.

2 Q What's your answer?

3 A No.

4 Q So the only thing you tested so far in this
5 deposition as I can understand it is that person who
6 navigates through those four consecutive pages; is that
7 correct?

8 A Actually, I navigated for them. I presented all
9 respondents with four different pages seriatim.....

10 Q Always presented in the same order, correct?

11 A Correct.

12 Q So would you agree with me that what you solely
13 tested was the perception in your view of someone who
14 navigated through those exact same four pages and then
15 tested them after they had seen all four; is that
16 correct?

17 A I certainly tested them after they had seen all
18 four.

19 Q Okay. And you didn't test their perception of
20 any particular point in that process, just at the end of
21 it, correct?

22 A Correct.

23 Q Why not?

24 A Because I wished to give them as much or as
25 little time, as much or as little exposure to the DMV.ORG

Page 129

Ben Hyatt Certified Deposition Reporters
888.272.0022 818.343.7040 Fax 818.343.7119 www.benhyatt.com

Kenneth Hollander - 8/21/2007

1 reading from Exhibit 182, quote, please review each page
2 carefully. Now, that specific instruction doesn't appear
3 anywhere on the DMV.ORG website, does it, in the actual
4 website in use?

5 A No, it does not.

6 Q The next statement, "Take as much or as little
7 time as you normally would." That also doesn't appear on
8 the DMV.ORG website, does it?

9 A No, it does not.

10 Q Okay. Now, this is really interesting. You add
11 this gratuitous statement, quote, note that, No. 1, you
12 can scroll all the pages up and down, and No. 2,
13 throughout this interview you may return to any of the
14 four pages you wish to read again, close quote.

15 Did you write that?

16 MR. DAUCHER: Argumentative. I can make a
17 record. Move to strike the question as improper.

18 BY MR. MAKOUS:

19 Q Did Mr. Daucher write that for you?

20 A Let me repeat my answer to the previous
21 question. I wrote that.

22 Q Now, nobody in the DMV.ORG website is told to
23 scroll anywhere; is that right?

24 A Correct.

25 Q Would you agree that Internet traffic often

Page 131

Ben Hyatt Certified Deposition Reporters
888.272.0022 818.343.7040 Fax 818.343.7119 www.benhyatt.com

Kenneth Hollander - 8/21/2007

1 moves rapidly, that people click through quickly?

2 A I'm sure some do, some don't. I believe some
3 scroll up and down and some do not.

4 Q Once they get what they want, they move forward,
5 right, they don't study the entire page; is that correct?

6 A That is correct.

7 Q Now, you would also agree, would you not, that
8 in the actual DMV.ORG experience, no one -- no one ever
9 has four pages reviewable by them at the same time,
10 correct?

11 A Sir, these were not reviewable at same time.

12 Q They were saved and they could review and look
13 at them any amount of time they wanted, as many times as
14 they wished, correct?

15 A That is correct.

16 Q That's not consistent with the actual site
17 experience of a website traveler, is it?

18 A I have no idea. Sometimes when I go to sites, I
19 review the pages.

20 Q So you don't know. You said "no idea."

21 MR. DAUCHER: His testimony is that --

22 MR. MAKOUS: Be quiet.

23 MR. DAUCHER: -- as he --

24 MR. MAKOUS: Object. Please don't coach.

25 THE WITNESS: I answered your question.

Page 132

Ben Hyatt Certified Deposition Reporters
888.272.0022 818.343.7040 Fax 818.343.7119 www.benhyatt.com

Kenneth Hollander - 8/21/2007

1 that don't have DMVs?

2 I withdraw the question. I know I speak fast.

3 Do you know if the DMV.ORG website presented to
4 the viewer that is from a state that doesn't have a
5 Department of Motor Vehicles, a DMV, do they call it the
6 state DMV similar to the way that the California page is
7 presented?

8 A I've listened carefully -- who calls it? Does
9 each state call it their department?

10 Q No. You are testing DMV.ORG's website in your
11 view; is that correct?

12 A Correct.

13 Q In those states where there is no Department of
14 Motor Vehicles, DMV, such as you tested Alabama and
15 Maryland --

16 A And Arizona and New Mexico.

17 Q Do you know if the stimuli presented to the
18 viewer said the unofficial online guide to the Alabama
19 DMV or did it say the Alabama DOT or did it say Alabama
20 something else?

21 A As I sit here today, I do not know. It's got to
22 be in there.

23 MR. MAKOUS: Counsel for the defense has just
24 presented me with -- I'll mark this as an exhibit.

25 Off the record.

Page 141

Ben Hyatt Certified Deposition Reporters
888.272.0022 818.343.7040 Fax 818.343.7119 www.benhyatt.com

Kenneth Hollander - 8/21/2007

1 can you?

2 A I didn't test it, so I can't opine on it.

3 Q Why did you move the viewer to what we are going
4 to mark as Exhibit 187, which is the next screen?

5 (Deposition Exhibit 187 was marked for
6 identification by the court reporter.)

7 A It was the fourth stimulus that everybody saw.

8 Q So at the time just prior to opening the fourth
9 stimuli, you don't know what the state of mind of the
10 consuming public was that you tested, do you?

11 A Correct, I do not.

12 Q Okay. And you don't know if this particular
13 image impacted their view one way or the other, caused
14 them to change their mind or differentiate their view, do
15 you?

16 A That feels like a lot of questions, Counselor.

17 Q You don't know one way or the other whether this
18 fourth stimuli changed the point of view in any respect
19 in any of respondents; is that correct?

20 A That is correct.

21 Q Why did you put that on there?

22 A Because it's the last place you go before
23 spending money.

24 Q Is that a DMV.ORG page?

25 A No. That was where the DMV.ORG series sends you

Page 151

Ben Hyatt Certified Deposition Reporters
888.272.0022 818.343.7040 Fax 818.343.7119 www.benhyatt.com

Kenneth Hollander - 8/21/2007

1 final traffic school questionnaire.

2 BY MR. MAKOUS:

3 Q That bears your correct e-mail address at the
4 top; is that correct? Ken@khresearch.com?

5 A Yes.

6 Q That's the correct address. Did you send this
7 e-mail to Mr. Daucher on the date indicated?

8 A I'm sure I did.

9 Q And it has -- on the second page it has the
10 traffic school screener?

11 A Yes.

12 Q Are these, in fact, the screening questions that
13 are used in all the surveys that you're testifying on
14 today?

15 A I believe it is.

16 Q Why did you select the second question, "Are you
17 male or female"?

18 A So that I could look at those dated by gender if
19 I wished to.

20 Q Is that just a standard survey question?

21 A Yes.

22 Q And why did you select the age ranges in
23 screening question No. 3, 18 to 60?

24 A I wanted to screen out anybody who was under 18
25 and I simply made a judgment to screen out people age 60

Page 154

Ben Hyatt Certified Deposition Reporters
888.272.0022 818.343.7040 Fax 818.343.7119 www.benhyatt.com

Kenneth Hollander - 8/21/2007

1 or older.

2 Q That's the same screening that Dr. Maronick
3 used. Are you aware of that?

4 A It may be. I may be aware of that or may not
5 be. I find no fault.

6 Q Screening question 4, why do you select that
7 question, "Do you currently have a valid driver's
8 license"?

9 A Because if you don't have a valid driver's
10 license, you wouldn't be going to a traffic school, you
11 probably would be going to jail.

12 Q That's a little extreme. Your point is, one of
13 the ways that you're trying to identify the demographic
14 is to identify those that are likely to go to traffic
15 school; is that correct?

16 A Sure.

17 Q You're trying to identify those that may choose
18 online traffic schools as part of their goal?

19 A That's where I get to S/, screener 7. It just
20 seemed reasonable and prudent for me to ask if you have a
21 valid driver's license. You get a ticket without a valid
22 driver's license. You get bigger problems than going to
23 driver school.

24 Q Screen question 6 seems to be a problem for the
25 residents of Alabama and Maryland because they can't go

Page 155

Ben Hyatt Certified Deposition Reporters
888.272.0022 818.343.7040 Fax 818.343.7119 www.benhyatt.com

Kenneth Hollander - 8/21/2007

1 to online traffic school, correct?

2 MR. DAUCHER: Object, that it lacks foundation
3 at that point, assuming that that is the case.

4 THE WITNESS: Well, what you say, sir, may be
5 true, but there were a sufficient number of people who
6 thought that was a jolly good idea and it was a gateway
7 question to be exposed to DMV.ORG.

8 BY MR. MAKOUS:

9 Q Okay. So in your view, that doesn't affect the
10 reliability of the survey, the fact that the respondents
11 from those two states couldn't attend an online traffic
12 school in their state?

13 MR. DAUCHER: Objection. Lacks foundation.

14 THE WITNESS: Yes, I agree that it does not
15 affect it, and please note that the question is assume.

16 BY MR. MAKOUS:

17 Q Okay. Screen question 7, you now have four
18 choices. Let's read it on the record.

19 "How likely would you be to use a search engine
20 such as Google or Yahoo to find out about online traffic
21 schools in your state?"

22 "Very likely, somewhat likely, not likely not
23 sure."

24 You wrote that question, right?

25 A I did.

Page 156

Ben Hyatt Certified Deposition Reporters
888.272.0022 818.343.7040 Fax 818.343.7119 www.benhyatt.com

Kenneth Hollander - 8/21/2007

1 Q Why did you select a question about a search
2 engine? What is the relevance of that?

3 A Because it is my understanding that that is
4 essentially how, if not -- that is my understanding of
5 how people essentially get to the DMV.ORG website.

6 Q Okay.

7 A If somebody told me they weren't going to go
8 through a search engine, then I don't want to talk to
9 them.

10 Q Dr. Maronick had a similar question which you
11 have no issue with as well?

12 A That's correct.

13 Q You didn't really use any aspect of search
14 engines, though, in your actual survey just in the
15 screening questions; is that correct?

16 A That is correct.

17 Q Did you attempt to test any other perceptions of
18 the public and discard them at any time during your
19 engagement?

20 MR. DAUCHER: Objection. Compound.

21 THE WITNESS: No and no.

22 BY MR. MAKOUS:

23 Q What are the two nos?

24 A No, I didn't attempt to test any others. And
25 had I done so, I didn't discard them. I didn't test

Page 157

Ben Hyatt Certified Deposition Reporters
888.272.0022 818.343.7040 Fax 818.343.7119 www.benhyatt.com

Kenneth Hollander - 8/21/2007

1 Q The same group that responded to 1-A also
2 responded to 1-B; is that correct?

3 A That is correct.

4 Q Now, what if someone thought there were multiple
5 affiliations that they observed, how could they answer
6 1-A and 1-B?

7 A Because that is -- it's asked of each answer to
8 1-A.

9 Q Okay. Can you elaborate for me on that?

10 A "Which entity is affiliated with someone else,"
11 brown and black. With whom is brown affiliated with,
12 whom is black affiliated with.

13 Q Okay. I'm not sure of the answer and I'm not
14 espousing that you're not trying to answer. I don't know
15 what you said.

16 A It's affiliated with GEICO and Progressive.

17 Q Let me give you the hypothetical viewer who
18 looks at your four stimuli and then is asked a question
19 like No. 1.

20 First, agree with me or disagree with me, you're
21 not identifying which pages they draw the association or
22 affiliation from, are you, just that somewhere in the
23 previous four pages, they have some view on that; is that
24 correct?

25 A That's correct.

Page 175

Ben Hyatt Certified Deposition Reporters
888.272.0022 818.343.7040 Fax 818.343.7119 www.benhyatt.com

Kenneth Hollander - 8/21/2007

1 Q Okay. Secondly, you don't know at this point in
2 No. 1 how many affiliations they have drawn in their
3 minds, just that they are going to answer one or more or
4 none or not sure.

5 So the next point is, you don't know if you have
6 six affiliations in your mind or two when they answer the
7 one or more -- I'm sorry, one, when they answer one or
8 more?

9 A I don't know what is in their mind when they
10 answer one or more.

11 Q Okay. So the viewer, the respondent, could have
12 six affiliations in mind. Hypothetically, is that
13 possible?

14 A It's hypothetically possible.

15 Q Is it possible that they believe that one
16 entity, as you call them, is affiliated with more than
17 one organization in their mind?

18 A Yes. That is possible.

19 Q Okay. You made no effort to ascertain that in
20 your testing, though, have you?

21 A I'm back to my hypothetical brown and black,
22 GEICO and Progressive. Which entity is affiliated with
23 someone else? GEICO and Progressive. With whom is GEICO
24 affiliated? With whom is Progressive affiliated.

25 Q But you don't know GEICO and Progressive?

Page 176

Ben Hyatt Certified Deposition Reporters
888.272.0022 818.343.7040 Fax 818.343.7119 www.benhyatt.com

Kenneth Hollander - 8/21/2007

1 more are finished at the end of the series 1 questions.

2 They have skipped to the "thank you for participation."

3 Q Why did you exclude in question 2 anyone who had
4 responded yes, one or more is affiliated?

5 A Because they have already told me that there is
6 some connection between one or more entities on those web
7 pages.

8 Q So you, sir, made a decision that affiliation
9 equals endorsements and sponsorship, correct?

10 A I have made it a decision to give everybody, as
11 it were, one bite of the apple. I'm not giving them two
12 bites. If they think there's affiliation, that's
13 sufficient for me. For the purposes of this survey, it's
14 sufficient that they have answered in the affirmative,
15 I've terminated them essentially afterwards.

16 Q When you use the word "affiliated," do you have
17 a point of view as to whether or not your survey
18 respondents understand what it means?

19 A In the same way that I'm assuming the word, the
20 term entity is understandable, I'm assuming that the word
21 affiliated is understandable.

22 Q Affiliate has a very broad meaning though, sir;
23 would you agree?

24 A I'm sure it can mean more than one thing.

25 Q Okay. What can you think of that it means?

Page 180

Ben Hyatt Certified Deposition Reporters
888.272.0022 818.343.7040 Fax 818.343.7119 www.benhyatt.com

Kenneth Hollander - 8/21/2007

1 Give me examples or definitions.

2 A Having some sort of connection or relationship.

3 Q Okay. If I belong to the local YMCA, am I
4 affiliated with it?

5 A If you think so, you are.

6 Q Answer my question. Do you think if I am a --
7 belong, if I'm a member of the local YMCA, am I an
8 affiliate?

9 A No. You're a member of it.

10 Q So that's not affiliation. Membership is not
11 affiliation.

12 MR. DAUCHER: Asked and answered.

13 THE WITNESS: Membership is not affiliation.

14 BY MR. MAKOUS:

15 Q Okay. If I work at a law firm as a secretary,
16 am I affiliated with it?

17 A You're employed there.

18 Q So employment is not affiliation; is that
19 correct?

20 A That is correct.

21 Q If I am married, am I affiliated with my wife?

22 A You are married to your wife.

23 Q So not affiliated.

24 If I'm a licensee of an enterprise, am I
25 affiliated with it?

Page 181

Ben Hyatt Certified Deposition Reporters
888.272.0022 818.343.7040 Fax 818.343.7119 www.benhyatt.com

Kenneth Hollander - 8/21/2007

1 kinds of disputes and debates about what it means,
2 correct?

3 A That sounds like two questions. It's wide and
4 subject to debates. It is what the respondent thinks it
5 is and the respondent had the opportunity to tell us that
6 DMV.ORG is affiliated with some entity or not.

7 Q Do you know if the respondent perceived DMV.ORG
8 as an entity?

9 A Do I know that they did? No, I don't know that
10 they did.

11 Q You never tested that, you never asked them
12 directly about the domain name, did you?

13 MR. DAUCHER: Asked and answered this morning.

14 THE WITNESS: I do feel we've been over this
15 ground before, Counselor. I did not ask any direct
16 questions about the domain name.

17 BY MR. MAKOUS:

18 Q Nor about the ownership, sponsorship and
19 endorsement of the website, did you?

20 A We've been over this before.

21 Q We didn't go over endorsement or sponsorship.

22 Would you agree that you did not test the
23 beliefs of the public as to the ownership, sponsorship or
24 endorsement of the DMV.ORG website?

25 A That is correct.

Page 184

Ben Hyatt Certified Deposition Reporters
888.272.0022 818.343.7040 Fax 818.343.7119 www.benhyatt.com

Kenneth Hollander - 8/21/2007

1 A Yes, it is.

2 MR. MAKOUS: Go ahead. You talk. I'm off the
3 record.

4 MR. DAUCHER: Let's take a break.

5 (Brief recess.)

6 MR. MAKOUS: Back on.

7 (Deposition Exhibit 194 was marked for
8 identification by the court reporter.)

9 BY MR. MAKOUS:

10 Q Exhibit 194 is a single-sheet document called
11 "Open-end Codes."

12 Is that your code on this project,
13 Mr. Hollander?

14 A Yes, that is my code.

15 Q Let's try to look at this together. I see code
16 No. 1, you've combined DMV, slash, state, slash,
17 government. So why is it that you combined those into
18 three categories as one code instead of separate?

19 A Because they are all speaking to an affiliation
20 with an official -- with an official governmental entity.

21 Q Does it presume that the respondent knows what
22 DMV means?

23 A Well, DMV was on the -- DMV.ORG was on there.

24 Q You mean it was on the stimuli?

25 A Right.

Page 197

Ben Hyatt Certified Deposition Reporters
888.272.0022 818.343.7040 Fax 818.343.7119 www.benhyatt.com

Kenneth Hollander - 8/21/2007

1 Q Does it presume that the respondent understands
2 DMV to mean Department of Motor Vehicles is a
3 governmental agency?

4 A Yes, I think that presumes.

5 Q Is it also possible that people combine DMV, a
6 nongovernmental agency, with two governmental agencies?

7 MR. DAUCHER: Vague.

8 BY MR. MAKOUS:

9 Q Let me repeat the question.

10 You've combined -- you created those three
11 categories, quote, DMV, close quote, quote, government,
12 and, quote, state, together, correct?

13 A I did.

14 Q Then you made a judgment call, as survey experts
15 do, in coding as to whether an open-ended response meant,
16 quote, DMV, or whether an open-ended response meant,
17 quote, state, or whether an open-ended response meant,
18 quote, government in regards to the affiliation question,
19 correct?

20 A No. The respondent would have said one of those
21 three.

22 Q Right. But you made a decision when reading the
23 open-ended responses whether they meant DMV or state or
24 government in their response?

25 A I read it. If I saw it, I gave it a 1.

Page 198

Ben Hyatt Certified Deposition Reporters
888.272.0022 818.343.7040 Fax 818.343.7119 www.benhyatt.com

Kenneth Hollander - 8/21/2007

1 Q In other words, if someone in their response
2 said, who do you think this is affiliated with, they put
3 DMV. Take that as a hypothetical response. How would
4 you have coded that?

5 A One.

6 Q If someone gave the hypothetical response of
7 state department, how would you have coded that?

8 A State department might have gotten "other." If
9 somebody said state of California or California or
10 Alabama or something, I would have given it a 1.

11 Q Does California in the response you just gave
12 mean the state of California?

13 A That's what I -- yes.

14 Q How would you make that determination when the
15 respondent said California, they meant state of
16 California?

17 A Sir, we're in a hypothetical here and I'm
18 staying within your hypothetical.

19 Q Okay.

20 A DMV California, state, governmental agency, all
21 got a 1.

22 Q That would include federal government in there
23 as well?

24 A If anybody would have responded federal
25 government, yes. It's a disjunctive idea, Counselor, to

Page 199

Ben Hyatt Certified Deposition Reporters
888.272.0022 818.343.7040 Fax 818.343.7119 www.benhyatt.com

Kenneth Hollander - 8/21/2007

1 separate them from all other responses that are not in
2 that cluster, in that constellation.

3 Q In code No. 2, it says, "All other." Code No. 3
4 says "Don't know, not sure, guessing." No. 4 says
5 "None." No. 5 has "GEICO, Progressive, insurance
6 company." No. 6 says "DMV.ORG" and No. 7 says "CAR.ORG."

7 When someone answered No. 6, DMV.ORG, do you
8 know if they meant state agency or not?

9 A No, sir. If they answered DMV.ORG, they got a
10 6.

11 Q Okay. Now, why do you separate that out from
12 No. 1?

13 A Because it's a separate response. It didn't say
14 DMV. It said DMV.ORG.

15 Q Okay. But that doesn't mean they don't think
16 it's a state agency, does it?

17 A Sir, I'm not capable of climbing into somebody's
18 mind. I can only deal with the responses in front of me.
19 If the response was DMV, period, I gave it a 1. If it
20 was DMV.ORG, I gave it a 6.

21 Q Okay. If you went back to your data and took
22 all the DMV.ORGs and combined them with No. 1, would that
23 affect your opinion?

24 A I wouldn't do that.

25 Q Would that have affected your opinion?

Page 200

Ben Hyatt Certified Deposition Reporters
888.272.0022 818.343.7040 Fax 818.343.7119 www.benhyatt.com

Kenneth Hollander - 8/21/2007

1 A I have no idea.

2 Q It would change the results, though, that you
3 calculated and analyzed, correct?

4 A I have no idea.

5 Q DMV.ORG, you don't know when someone answered
6 DMV.ORG, if they believe it to be a state agency or not,
7 do you?

8 A No. All I know is I'm presented with the
9 answer, quote, DMV.ORG, end quote. I gave it a separate
10 code.

11 Q But you don't know the state of mind, whether
12 that respondent believed that that answer meant somebody
13 affiliated with a state agency or not; is that correct?

14 A Well, sir, in a way I certainly do because then
15 we said, "With whom is it affiliated?" And nobody said
16 the DMV.ORG is affiliated with the DMV.ORG. Very few
17 people said DMV.ORG is affiliated with DMV, slash, state,
18 slash, government, and some people said DMV, slash,
19 state, slash, government, is affiliated with DMV.ORG. I
20 am able to capture that and report it.

21 Q Why did you have a category for GEICO and
22 Progressive?

23 A Because when I started this laborious process, I
24 had included them in "all other." Then I saw that they
25 were achieving a life of their own, so I went back and

Page 201

Ben Hyatt Certified Deposition Reporters
888.272.0022 818.343.7040 Fax 818.343.7119 www.benhyatt.com

Kenneth Hollander - 8/21/2007

1 a more probative manner and I get different results, and
2 I believe my survey rebuts those results purporting to
3 emanate from the plaintiff's survey.

4 BY MR. MAKOUS:

5 Q You come up with an independent opinion as to
6 whether or not defendant's website is deceptive,
7 unrelated to the opinion of Dr. Maronick; am I correct?

8 MR. DAUCHER: Argumentative.

9 BY MR. MAKOUS:

10 Q Go ahead.

11 A My opinion which I have expressed in
12 paragraph -- whatever the heck it is, 16, is independent
13 of the results expressed by the plaintiff's survey.

14 Q It's independent of it?

15 A Correct.

16 Q Let's go to paragraph 14, second page of
17 paragraph 14, Mr. Hollander. I'm going to read the
18 paragraph just for the record.

19 Quote, if you have an opinion, do you think that
20 any of the entities shown on these four pages is
21 affiliated with anyone else or that none of them are
22 affiliated with anyone else, question mark.

23 Those thinking that there was an affiliation
24 were then asked, which entity is affiliated with someone
25 else and with whom is it affiliated. We've been through

Page 204

Ben Hyatt Certified Deposition Reporters
888.272.0022 818.343.7040 Fax 818.343.7119 www.benhyatt.com

Kenneth Hollander - 8/21/2007

1 this.

2 Next paragraph, you say, those with no opinions
3 and those thinking none are affiliated were asked, and if
4 you have an opinion, do you think that any of the
5 entities shown on these four pages is endorsed or
6 sponsored by anyone else, or do you think that none of
7 them is endorsed or sponsored by anyone else, close
8 quote.

9 How is that you asked people with no opinion if
10 they have an opinion after they already told you they
11 don't have an opinion?

12 A They had no opinion about the affiliation. I
13 asked them about sponsorship and endorsement and some of
14 them did have an opinion about sponsorship or
15 endorsement.

16 Q You meant those with no opinion on affiliation
17 were then asked, "And if you have an opinion"?

18 A Yes.

19 Q But you don't tell them that's why you're asking
20 them that. You don't say do you have an opinion on
21 sponsorship or endorsement, or you don't say to them, you
22 answered you don't believe -- you have no opinion on the
23 affiliation, I'm now going to ask you about sponsorship
24 and endorsement, do you?

25 A No.

Page 205

Ben Hyatt Certified Deposition Reporters
888.272.0022 818.343.7040 Fax 818.343.7119 www.benhyatt.com

Kenneth Hollander - 8/21/2007

1 It's implied in that phrase.

2 A Yes. It is seriatim after my first declaratory
3 statement that it's okay to have an opinion, then asking
4 them in the question 1 series if they have an opinion,
5 then finally I say, again, if you have an opinion. I
6 should think that is anything but prodding them to have
7 an opinion.

8 Q I think you agree -- would you agree that
9 affiliation as you've used it encompasses endorsement and
10 sponsorship? It's a broader term?

11 MR. DAUCHER: Vague. And I object to the
12 characterization of his testimony.

13 THE WITNESS: I don't know. In a legal sense, I
14 don't know.

15 BY MR. MAKOUS:

16 Q No. In a survey sense.

17 A In a survey sense, I'm asking about affiliation.
18 In a survey sense, I'm saying those of you who did not --
19 I'm saying to those people who either said no, or, I have
20 no opinion about affiliation, do you believe there's a
21 sponsorship or endorsement.

22 Q But affiliation is broad enough to include an
23 endorsement or sponsor, is it not?

24 MR. DAUCHER: In his opinion?

25 THE WITNESS: In my opinion, it could be. In my

Page 207

Ben Hyatt Certified Deposition Reporters
888.272.0022 818.343.7040 Fax 818.343.7119 www.benhyatt.com

Kenneth Hollander - 8/21/2007

1 opinion, sponsorship or endorsement is subsumed under
2 affiliation and/or affiliation is subsumed under
3 sponsorship or endorsement.

4 BY MR. MAKOUS:

5 Q Okay. Let's go to paragraph 7 of your survey,
6 expert report 172. Your criticisms of Dr. Maronick are
7 summarized in paragraph 8; is that correct?

8 A That is correct.

9 Q All right. Let's go to paragraph 9, first
10 criticism is called "Improper stimuli." Is your opinion
11 captured in that paragraph and in your testimony today?

12 A Are you saying --

13 Q Is there any more on improper stimuli you would
14 like to add?

15 A No, there is not.

16 Q Okay. From the documents I've seen, I noticed
17 that your stimuli is a pdf website document; is that
18 correct?

19 A Correct.

20 Q How do you scroll a pdf?

21 A You use the scroll bar.

22 Q Okay. Where is that?

23 A It's on the respondent's computer.

24 Q Is it on the side, put the mouse on it, move up
25 and down?

Page 208

Ben Hyatt Certified Deposition Reporters
888.272.0022 818.343.7040 Fax 818.343.7119 www.benhyatt.com

Kenneth Hollander - 8/21/2007

1 A No.

2 Q Is it reliable within the 85 percent confidence
3 level?

4 A Probably at the 80 percent confidence level.
5 We're talking about all others. I'm trying to measure
6 and I'm reporting on the measurement of noise with
7 respect to DMV and DMV.ORG. That's what I'm trying to
8 account for. Of course, some numbers are going to be
9 different.

10 Q Okay. Now, if you look at the question 1-A,
11 DMV, slash, state, slash, government. Look at the
12 results that go across in the six columns. Would you
13 agree that the results for the non-DMV states indicate a
14 lower affiliation opinion than California?

15 A I would.

16 Q Yet you combined those non-DMV states with
17 California to formulate your opinion, didn't you?

18 A I did.

19 Q Would you agree that the numbers in the non-DMV
20 states lower the total number of people in the entire
21 test group and control group that found an affiliation?

22 A They were lower in both the test and control
23 group, true.

24 Q When you combine them with California, would you
25 agree that the net result was to lower the overall

Page 228

Ben Hyatt Certified Deposition Reporters
888.272.0022 818.343.7040 Fax 818.343.7119 www.benhyatt.com

Kenneth Hollander - 8/21/2007

1 result?

2 A Yes. I would agree with that.

3 Q Now, does it concern you to have so many
4 controls that are in excess in this chart of the test
5 groups? For example, question 1-B, your control of 14.7
6 exceeds 12.6 on the DMV, slash, state, slash, government
7 line, meaning that the control, it's a negative. I mean,
8 we have a control group that's supposedly measuring
9 noise, you're assuming the entire test group and some.
10 What does that mean?

11 A It means what I've been trying to tell you it
12 means, sir, that anything that appears on those pages
13 dealing with the subject of traffic schools may, in fact,
14 be thought to have some relationship, affiliations,
15 sponsorship or endorsement with an official governmental
16 agency. I have been saying that consistently.

17 Q I will go back to my question though. It wasn't
18 responsive, but it was an answer. Let's take question
19 1-B. DMV, slash, state, slash, government. Moving left
20 to right, your test group in the first column is 11.4
21 total. Your control group is 10.8. That column is a
22 combination of the two right-hand columns, one for
23 California and one for non-California, correct?

24 A Correct.

25 Q Focusing for a minute just on California, which

Page 229

Ben Hyatt Certified Deposition Reporters
888.272.0022 818.343.7040 Fax 818.343.7119 www.benhyatt.com

PROOF OF SERVICE

Trafficschool.com, Inc. v. Edriver, Inc. - File No. 25162-14

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and not a party to the action. My business address is . I am employed in the office of a member of the bar of this Court at whose direction the service was made.

On November 9, 2007, I served the following document(s):

PLAINTIFFS' DESIGNATION OF SELECTED DEPOSITION TESTIMONY OF KENNETH HOLLANDER IN LIEU OF CROSS-EXAMINATION PURSUANT TO COURT ORDER ISSUED FROM BENCH ON 11/8/2007

I served the documents on the following persons at the following addresses (including fax numbers and e-mail addresses, if applicable):

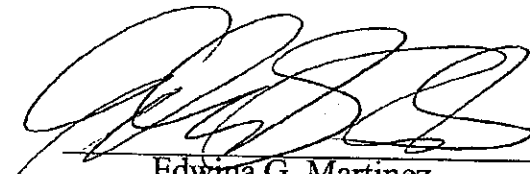
Brian M. Daucher, Esq.
Joseph H. Tadros, Esq.
Amy Merlo, Esq.
SHEPPARD MULLIN RICHTER & HAMPTON
650 Town Center Drive, 4th Floor
Costa Mesa, California 92626-1925
Telephone: (714) 513-5100
bdaucher@sheppardmullin.com
jtadros@sheppardmullin.com
amerlo@sheppardmullin.com

The documents were served by the following means:

☒ (BY E-MAIL OR ELECTRONIC TRANSMISSION) Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the documents to be sent to the persons at the e-mail addresses listed above. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on November 9, 2007, at Los Angeles, California.


Edwina G. Martinez